

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION**

DOROTHY HAYMER, on behalf of her minor child D.S., et al.

PLAINTIFFS

VS.

Civil Action No. 3:17-cv-00404-HTW-LGI

**TATE REEVES, in his official capacity as
Governor of Mississippi, et al.**

DEFENDANTS

**DEFENDANTS' MOTION TO INCREASE BRIEFING PAGE LIMIT TO
ACCOMMODATE FULL BRIEFING OF DEFENDANTS' MOTION TO DISMISS**

COME NOW Defendants¹, by and through counsel, and pursuant to Rule 7, *Federal Rules of Civil Procedure*, file this their motion to increase (by 10 pages) the briefing page limit imposed by L.U.Civ.R. 7(b)(5) to accommodate full briefing of Defendants' motion to dismiss, and in support thereof would show unto the Court the following:

1. On September 14, 2021, Defendants timely filed their motion to dismiss Plaintiffs' First Amended Complaint (Dkt. #66) and supporting memorandum of authorities (Dkt. #67). Defendants' aforementioned memorandum of authorities (Dkt. #67) contained approximately 30 pages of substantive text. *See* Defendants' Memorandum of Authorities (Dkt. #67).

¹ "Defendants" is used collectively herein to refer to the following: Defendant Tate Reeves, in his official capacity as Governor of Mississippi; Defendant Philip Gunn, in his official capacity as Speaker of the Mississippi House of Representatives; Defendant Delbert Hosemann, in his official capacity as Lieutenant Governor of Mississippi; Defendant Michael Watson, in his official capacity as Secretary of State of Mississippi; Defendant Carey Wright, in her official capacities as State Superintendent of Education and Executive Secretary of the Mississippi State Board of Education; Defendant Rosemary Aultman, in her official capacity as Chair of the Mississippi State Board of Education; and Defendants Angela Bass, Ronnie McGehee, Karen Elam, Glen East, Wendi Barrett, Matt Miller, Mary Werner (incorrectly identified in Plaintiffs' First Amended Complaint as "Mary Wener"), and Bill Jacobs, in their official capacities as Members of the Mississippi State Board of Education. There are no other defendants.

2. On October 14, 2021, Plaintiffs timely filed their response in opposition to Defendants' motion to dismiss (Dkt. #71) and their supporting memorandum of authorities (Dkt. #72).

3. Pursuant to the time intervals established in the governing briefing schedule order (Dkt. #64), Defendants' rebuttal in further support of their aforementioned motion to dismiss is presently due October 29, 2021. Defendants presently anticipate that their rebuttal may contain up to 15 pages of substantive text.

4. In their First Amended Complaint filed herein, Plaintiffs seek a declaratory judgment that Section 201 of the Mississippi Constitution (i.e., the education clause) violates the Mississippi Readmission Act of 1870, 16 Stat. 67 (1870), a federal Reconstruction-era statute by which Mississippi's representatives were readmitted to Congress following the Civil War. Plaintiffs' First Amended Complaint at 37 (Dkt. #65).

5. Defendants' motion to dismiss asserts three independent defenses to Plaintiffs' claims, namely (1) that this case presents a nonjusticiable political question; (2) that Plaintiffs lack standing; and (3) that there is no private right of action. *See* Defendants' Motion to Dismiss (Dkt. #66). Given the uniqueness of the legislation at issue, the need to fully address three independent bases for dismissal concurrently, and the complexities of the governing case law, the issues presented by Defendants' motion cannot be adequately addressed within the combined 35-page limit imposed by L.U.Civ.R. 7(b)(5).²

6. So that Defendants may provide the Court with a complete and orderly presentation of the issues at hand, the governing law, and Defendants' arguments in rebuttal to Plaintiffs' oppositional response, Defendants request that the combined 35-page limit imposed by L.U.Civ.R.

² L.U.Civ.R. 7(b)(5) provides that the "[m]ovant's original and rebuttal memorandum briefs together may not exceed a total of thirty-five pages" L.U.Civ.R. 7(b)(5).

7(b)(5) be increased by 10 pages to 45 pages, such that Defendants' rebuttal may contain up to 15 pages of substantive text.

7. The undersigned has conferred with counsel opposite, who has advised that Plaintiffs take no position on the relief requested herein (i.e., Plaintiffs neither oppose nor agree).

8. This motion is filed in good faith and is not interposed for delay or other improper purpose. Given the nature of this motion and the relief requested, the grounds for which are apparent on the face of the instant motion, Defendants respectfully request that the Court waive the requirement for the filing of a memorandum of authorities.

9. In accordance with local rules, a proposed order will be separately transmitted to the district judge's chambers via e-mail.

WHEREFORE, PREMISES CONSIDERED, in order to accommodate full briefing of Defendants' motion to dismiss, Defendants respectfully request that the Court make and enter its Order granting Defendants' instant motion and increasing the briefing page limit set forth in L.U.Civ.R. 7(b)(5) by 10 pages, such that Defendants' memorandum of authorities in support of their motion to dismiss and Defendants' rebuttal in further support of their motion to dismiss may together total up to 45 pages of substantive text.

THIS the 26th day of October, 2021.

Respectfully submitted,

GOVERNOR TATE REEVES, ET AL.,
DEFENDANTS

By: LYNN FITCH, ATTORNEY GENERAL
STATE OF MISSISSIPPI

By: s/Rex M. Shannon III
REX M. SHANNON III (MSB #102974)
Special Assistant Attorney General

STATE OF MISSISSIPPI
OFFICE OF THE ATTORNEY GENERAL
CIVIL LITIGATION DIVISION
Post Office Box 220
Jackson, Mississippi 39205-0220
Tel.: (601) 359-4184
Fax: (601) 359-2003
rex.shannon@ago.ms.gov

ATTORNEYS FOR GOVERNOR TATE REEVES, ET AL., DEFENDANTS

CERTIFICATE OF SERVICE

I, Rex M. Shannon III, Special Assistant Attorney General and one of the attorneys for Defendants Governor Tate Reeves, et al., do hereby certify that I have this date caused to be filed with the Clerk of the Court a true and correct copy of the above and foregoing via the Court's ECF System, which sent notification of such filing to all counsel of record.

THIS the 26th day of October, 2021.

s/Rex M. Shannon III
REX M. SHANNON III